

**IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO**

COMMON PLEAS COURT
2013 MAR 28 AM 11:51

MED EXPRESS, INC.,

Plaintiff,

vs.

AMY NICHOLLS, et al.,

Defendants.

) CASE NO.: 13CIV0351
)
)
) JUDGE COLLIER
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)

**JOURNAL ENTRY WITH
INSTRUCTIONS FOR SERVICE**

FILED
DAVID E. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

This matter is before the Court on the Plaintiff's motion for a temporary restraining order, preliminary injunction and permanent injunction pursuant to Civ.R. 65 filed on March 25, 2013. On March 26, 2013, the Plaintiff's motion for a temporary restraining order came before the Court for ex-parte hearing. The Plaintiff appeared and was represented by Attorney James Amodio. The motion requests that the Court issue a temporary restraining order pending a hearing on the Plaintiff's motion for a preliminary and permanent injunction.

Civ.R. 65(A) states that:

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required. The verification of such affidavit or verified complaint shall be upon the affiant's own knowledge, information or belief; and so far as upon information and belief, shall state that he believes this information to be true.

The Plaintiff's claims do not meet the threshold requirements of Civ.R. 65(A) regarding temporary restraining orders. First, the Plaintiff has failed to establish that immediate and irreparable injury, loss or damage will result to the Plaintiff before the adverse parties can be heard in opposition. The Plaintiff alleges that based on the negative feedback the Defendant Amy Nicholls posted about the Plaintiff on Ebay.com, the Plaintiff will continue to lose revenue

and income because the negative feedback negatively impacted the Plaintiff's overall numerical seller rating. The Plaintiff further claims that the lower seller ranking makes the Plaintiff less attractive to potential buyers, resulting in a potential loss of future sales.

A mere allegation of immediate and irreparable injury, loss or damage is insufficient to warrant a temporary restraining order. The alleged injury, loss or damage must actually be immediate and irreparable. Even if the Defendant's negative feedback caused or will cause the Plaintiff to lose potential future sales, the Plaintiff could pursue damages as a result. The Plaintiff's complaint seeks monetary damages. The Plaintiff is an experienced seller on Ebay.com, providing the Plaintiff with an avenue to compare his sales before the Defendant's feedback and the sales afterwards. As such, the Court hereby denies the Plaintiffs' motion for a temporary restraining order based on aforementioned analysis.

The Plaintiffs' motion for preliminary injunction is hereby scheduled for oral hearing on:

May 2, 2013 at 8:45 a.m.

Attendance is required.

IT IS SO ORDERED.


CHRISTOPHER J. COLLIER
JUDGE

The Clerk of Courts is instructed to send copies of the foregoing Journal Entry to the following parties or their counsel of record.

Atty. Amodio
Amy Nicholls – via certified mail
Ebay, Inc.

Copies of this Entry were mailed by the Clerk of Courts on March 28, 2013.


DEPUTY CLERK OF COURT